IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

MFA. No. 363 of 1994

OP(MV).204/1990 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, TRIVANDRUM.
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APPELLANT/ APPELLANT:

MOHANAKUMAR @ MOHANAN,
OOTTUVILAKATHU VEEDU,
ATTUKAL, MANACAUD P.O., THIRUVANANTHAPURAM.

BY ADV. SRI. N. GOVINDAN NAIR
SRI. P. PARAMESWARAN NAIR

RESPONDENTS/ RESPONDENTS:
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1. **THE MISSIONARIES OF CHARITY 9-531, UNIVERSITY ROAD, KUNNUKUZHY, THIRUVANANTHAPURAM. (OWNER OF JEEP).**

2. **K. GURUDASAN, VILAYIL VEEDU, MAUVILA, KULATHOOR, THIRUVANANTHAPURAM. (DRIVER OF JEEP).**

3. **THE UNITED INDIA, INSURANCE COMPANY LIMITED, PALAYAM, THIRUVANANTHAPURAM (INSURER).**

4. **S. EVANJALIS, GETHA BHAVAN, POONTHURA, THIRUVANANTHAPURAM. (OWNER OF MOTOR VEHICLE).**

5. **JOY FERNANDEZ, 'ALBINS', POONTHURA, THIRUVANANTHAPURAM. (RIDER OF MOTOR CYCLE).**

6. THE ORIENTAL INSURANCE COMPANY LIMITED, THIRUVANANTHAPURAM. (INSURER).

BY ADV. SRI.D.S.WARRIER
SRI.MATHEWS JACOB
SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA.No. 363/1994

Order on C.M.P.No.1496/1994 in MFA.No. 363/1994

Dismissed.

07.12.2006 **Sd/- K. HEMA, JUDGE.**

// True Copy //

P.A. to Judge.

smp

K. HEMA, J

M.F.A.No. 363 OF 1994

J U D G M E N T

07.12.2006.

K. HEMA, J.

M.F.A. No. 363 OF 1994 (D)

Dated this the 7th day of December, 2006.

J U D G M E N T

This appeal is filed against the dismissal of claim petition filed under Section 166 of the Motor Vehicles Act. The appellant claimed an amount of Rs.1 lakh as compensation for the injury sustained in a motor accident on 11.12.1989 at about 12.30p.m. According to the claimant, he was travelling on a motorcycle as a pillion rider and a jeep driven by the fifth respondent came in a rash and negligent manner and hit against the appellant and he was knocked down by the hit and sustained injuries. According to him, both drivers of the motor cycle as well as the jeep were rash and negligent in driving and he sustained injuries. He claimed compensation from the owner, driver and insurer of both the vehicles.

2. To prove the case PWs 1 to 3 were examined on the side of the appellant and Exhibits A1 to A14 were marked. The respondents did not adduce any evidence. The Tribunal on an analysis of the evidence found that the appellant failed to establish that the incident as alleged had taken place and dismissed the petition.

3. The Tribunal entered a finding that the alleged cause mentioned in Exhibit A7 wound certificate is the probable cause of the accident. Thereby it was held that the appellant failed to establish that the accident occurred as alleged by him. As per Exhibit A7, wound certificate, the alleged cause of injury was "while going on motorbike falling down hitting against stay wire at 1.30p.m near Aryasala". The case of the appellant is that, he was knocked down from the motorcycle in which he was travelling as a pillion rider by a jeep which was driven by the fifth respondent. He gave evidence consistent with this pleading. He also examined PW2 to support his case.

4. PWs 1 and 2 were not cross-examined. Their evidence stands undiscredited. It is also relevant to note that the fifth respondent has not denied the accident as such. The first and second respondent filed a joint statement and contended that the accident happened due to the negligence and lack of care and caution on the part of the driver of the motorcycle in which the petitioner was travelling as a pillion rider. It was also alleged that the motorcycle came in an over speed and in a rash and negligent manner from the reverse side of the jeep and the pillion rider's right leg happened to hit on the jeep.

5. According to the second respondent, the rashness and negligence on the part of the driver of the motorcycle alone was the cause of the accident. It is clear from a reading of the written statement filed by the first and second respondent that they do not deny the accident as such, but only the manner in which it happened.

6. The Tribunal placed reliance on the alleged cause of injury stated in Exhibit A7. Exhibit A7 is the wound certificate, but the maker of the said certificate has not been examined. There is no evidence to show as to who gave the alleged statement, which is seen recorded in Exhibit A7. It is seen that the injured was brought by one Sasi to the hospital. There is nothing in Exhibit A7 to show that the alleged cause of injury was stated to the doctor by PW1, the claimant. There is also nothing to show that the statement was given by any of the eyewitness. In the absence of any material to establish as to who gave the statement to the doctor, it will be improper to enter a finding that the accident occurred as alleged in the statement seen made in Exhibit A7. The statement allegedly recorded in Exhibit A7 cannot be used against the oral evidence given by PWs 1 and 2, especially in the absence of anything on record to show that the

said statement was made by PWs 1 or 2 to the doctor. Neither of these witnesses was cross-examined with reference to the relevant statement recorded in Exhibit A7.

7. In the above circumstances, the case set up by the claimant by his uncontroverted oral evidence ought not to have been discarded in the light of the statement contained in Exhibit A7. It was pointed out by learned counsel for the appellant that, the scene mahazar Exhibit A2 will not even disclose the presence of any stay wire in the place of occurrence or nearby. In such circumstances, the finding entered into by the Tribunal is liable to be set aside.

8. Learned counsel appearing for the respondents 1 to 3 submitted that the charge-sheet was filed against the second respondent. He was acquitted by a criminal court by a subsequent judgment. Therefore, it cannot be said that the incident happened because of the negligence and rashness on his part. Learned counsel appearing for the sixth respondent submitted that, the insurance company has no liability because the petitioner was a pillion rider and the policy does not cover such liability to pay any compensation to a pillion rider. In the light of the findings already entered into by me, I do not want it

necessary to discuss this matter and I leave open the entire matter for the Tribunal to decide.

The award challenged in this appeal is set aside. The case is remanded to the Tribunal for fresh consideration and disposal after giving opportunity to both sides to contest the matter on merits. This appeal shall be disposed of untrammelled by any of the observations made in this judgment in accordance with law.

This appeal is allowed.

K. HEMA, JUDGE

smp